LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 16-00614-BRO (ASx)**	Date	March 6, 2017
Title	**HARMONI INTERNATIONAL SPICE, INC. ET AL. V. WENXUAN BAI ET AL.**		

Present: The Honorable	**BEVERLY REID O'CONNELL, United States District Judge**	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (IN CHAMBERS)

ORDER RE PLAINTIFFS' EX PARTE APPLICATION [184]

The Court is in receipt of Plaintiffs Harmoni International Spice, Inc. ("Harmoni International") and Zhengzhou Harmoni Spice Co., LTD's ("Zhengzhou Harmoni") (collectively, "Plaintiffs") Ex Parte Application for Clarification of Order; or in the Alternative, for an Extension of Time to Amend the Complaint as to Defendant Bai. (Dkt. No. 184 ("Ex Parte Application" or "Application").) For the following reasons, the Court **GRANTS in part** Plaintiffs' Application.

On January 27, 2017, this Court ruled on Plaintiffs' Motion to Alter or Amend. (*See* Dkt. No. 181.) In its ruling, the Court ordered Plaintiffs to file an amended complaint with respect to Defendant Wenxuan Bai, if any, no later than February 13, 2017 at 4:00 p.m. (*See* Dkt. No. 181 at 19.) To date, Plaintiffs have not filed an amended complaint. On February 23, 2017, Plaintiffs filed the instant Ex Parte Application, seeking clarification regarding whether the Court's order on Plaintiffs' Motion to Alter constituted a final judgment on the merits with respect to the Dismissed Defendants. (*See* Application at 2.) On February 24, 2017, Defendants[1] opposed Plaintiffs' Application. (*See* Dkt. No. 185 ("Opp'n").)

The Court **GRANTS in part** Plaintiffs' Application with respect to Plaintiffs' request for clarification. As Plaintiffs state in their Application, the Court considered the

[1] Defendants Wenxuan Bai, Robert T. Hume, Joey C. Montoya, Stanley Crawford, Kwo Lee, Inc., Shuzhang Li, and Huamei Consulting Co., Inc. opposed Plaintiffs' Application.

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Dismissal Order to be a final judgment merely for the purposes of evaluating the merits of Plaintiffs' Motion to Alter. (*See* Application at 2.) And Plaintiffs are correct that, "there is currently no final *appealable* judgment under Fed. R. Civ. P. 54(b) because the Dismissal Order, ECF No. 163, adjudicated fewer than all of the claims and the parties . . . ." (Application at 2 (emphasis in original).)

Plaintiffs also seek a further extension of the deadline to file an amended complaint with respect to Defendant Wenxuan Bai. (*See id.*) Defendants oppose Plaintiffs' request for an extension to file an amended complaint, citing undue delay to the resolution of this suit. (*See* Opp'n at 1–2.) In light of Defendants' well-founded concern regarding undue delay and the multiple prior extensions to file an amended complaint with respect to Defendant Bai, the Court **DENIES** Plaintiffs' request for an extension of the deadline to file an amended complaint.

Furthermore, a district court may dismiss an action with prejudice when a plaintiff fails to file an amended complaint within the allotted time period. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) ("[T]he district court did not abuse its discretion in dismissing Plaintiffs' case for failing to amend in a timely fashion."); *Tok Cha Kim v. CB Richard Ellis Haw., Inc.*, No. CIV 06-00099 HG-BMK, 2006 WL 3359222, at *4 (D. Haw. Nov. 16, 2006) ("[T]he district court has discretion to dismiss a complaint with prejudice as a sanction for the plaintiff's failure to amend within the time established by the court's order."). Accordingly, Plaintiffs are **ORDERED TO SHOW CAUSE** as to why this action should not be dismissed with prejudice for failure to amend in the time allotted by the Court. An appropriate response to this order will include reasons demonstrating good cause for Plaintiffs' failure to timely file an amended complaint. Plaintiffs' response to this Order shall be filed no later than **Friday, March 10, 2017 by 4:00 p.m.**

IT IS SO ORDERED.

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